

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

August 22, 2014

- I. **ATTENDANCE** - The Chair called the meeting to order at 1:30 p.m. in the Council Chambers, 200 East Main Street, August 22, 2014. Members present were Chair Barry Stumbo, James Griggs, Larry Forester, Joan Whitman, Kathryn Moore, and Thomas Glover. Absent was: Janice Meyer. Others present were: Casey Kaucher, Division of Traffic Engineering; Chuck Saylor, Division of Engineering; Jim Marx, Zoning Enforcement; and Tracy Jones, Department of Law. Staff members in attendance were: Bill Saltee, Jimmy Emmons, and Tammye McMullen.

Note - At this time, Chair Stumbo wished to provide recognition of Noel White, whose Board of Adjustment term expired recently. A certificate of appreciation, signed by the Board members, was presented to Ms. White.

- II. **APPROVAL OF MINUTES** - The Chair announced there were no minutes to be considered at this time.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses - Prior to sounding the agenda, the Chair asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. The oath was administered at this time.

- A. **Sounding the Agenda** - In order to expedite completion of agenda items, the Chair sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chair announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

Mr. Emmons announced that the staff had received emails requesting withdrawal of three items on today's agenda; one of which been noted on the agenda.

- a. **V-2014-61: RAYMOND ROSS, JR.** - appeals for a variance to reduce the required 200-foot distance from a Special Design Area in the Expansion Area to 196 feet in order to construct a single family residence in an Expansion Area Residential (EAR-2) zone, at 317 Hays Boulevard (Council District 7).
- b. **C-2014-58: NEXT SHIFT KENTUCKY, LLC** - appeals for a conditional use permit to establish a passenger transportation terminal (Greyhound Bus Station) in a Highway Service Business (B-3) zone, at 1709 N. Broadway (Council District 1).
Mr. Bruce Simpson, representing Next Shift Kentucky, LLC, stated that they did submit a letter of withdraw via email and postal mail to the staff, and copies to the Board. He also said that a letter was sent to the only neighbor that had contacted him about the case. Mr. Simpson said that they had arranged for a neighborhood meeting that was going to be held the following Monday at Parkway Baptist Church. They have sent out notification, advising that they have cancelled that meeting.
- c. **A-2014-50: CORNETT INTEGRATED MARKETING SOLUTIONS** - an administrative appeal for a projecting sign for a use/office that does not have an entrance to the outside in a Downtown Business (B-2) zone, at 249 East Main Street (Council District 1).

No action was taken (or needed) on withdrawals.

2. **No Discussion Items** - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.

- B. **Transcript or Witnesses** - The Chair announced that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.

- C. **Conditional Use Appeals**
(Sounded items)

1. **C-2014-54: YMCA OF CENTRAL KENTUCKY** - appeals for a conditional use permit to allow an increase in enrollment for a child care facility from 50 to 138 children in a Light Industrial (I-1) zone, at 381 W. Loudon Avenue (Council District 1).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit to expand the child care enrollment should not adversely affect the subject or surrounding properties. No aspect of this request, if approved, should significantly alter the existing relationship of the subject property with the surrounding properties.
- b. Adequately designed facilities exist for the child care operations. Sufficient parking, pedestrian features, landscaping and buffering, required play areas, and infrastructure are all in place.
- c. Although the requested increase in child care enrollment will be more than double total enrollment, the YMCA is eliminating infant child care at this location to enable an increase in child care capacity for 2 to 6 year olds.

This recommendation of approval is made subject to the following conditions:

1. The child care center shall accommodate no more than 138 children enrolled, from age 2 to 13 years, operating daily Monday through Friday between the hours of 6:30 AM and 6:00 PM.
2. A minimum of 3,450 total square feet of indoor/outdoor play area shall be provided for the child care center, with outdoor areas to be fenced and screened in accordance with the requirements of the Zoning Ordinance.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to any construction.

Representation - Mr. David Martirano, president and CEO of the YMCA, was present, and he indicated that they had reviewed the recommended conditions and agreed to abide by them.

Citizen Comment – No citizens were present to speak about this appeal.

Action - A motion was made by Ms. Moore, seconded by Mr. Glover, and carried unanimously (Forester recused; Meyer absent) to **approve C-2014-54: YMCA OF CENTRAL KENTUCKY** – an appeal for a conditional use permit to allow an increase in enrollment for a child care facility from 50 to 138 children in a Light Industrial (I-1) zone, at 381 W. Loudon Avenue, for reasons recommended by the staff and subject to the three conditions recommended by the staff.

2. **C-2014-57: CROSSING CHRISTIAN FELLOWSHIP** - appeals for a conditional use permit to establish a church in a Wholesale and Warehouse Business (B-4) zone, at 480 Curry Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. Adjoining or nearby land uses are of a commercial or very high density residential nature and are not likely to be disturbed by typical church activities. The church will be able to provide its anticipated parking needs on site, and there are possibilities to provide additional overflow parking, if warranted, on one or more adjoining commercial properties.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The church shall be established in accordance with the submitted application and site plan.
2. All necessary permits, including a Zoning Compliance Permit and a Certificate of Occupancy, shall be obtained prior to the commencement of this use.
3. All outreach activities shall be limited to the hours of 3:00-9:00 PM Monday through Saturday.
4. This conditional use permit will be reviewed by the Board in one year from the date of the Certificate of Occupancy to assess the need for additional parking.

Representation - Mr. David Redish, pastor, was present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Citizen Comment – No citizens were present to speak about this appeal.

Action - A motion was made by Ms. Moore, seconded by Mr. Glover, and carried unanimously (Meyer absent) to **approve C-2014-57: CROSSING CHRISTIAN FELLOWSHIP** - an appeal for a conditional use permit to establish a church in a Wholesale and Warehouse Business (B-4) zone, at 480 Curry Avenue (Council District 3).

- D. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider

whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.
The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

(Discussion Items)

1. **V-2014-53: PATRICIA G. HILL** - appeals for a variance to increase the maximum allowable fence height from 6 feet to 8 feet in order to allow it to remain as constructed in a Single Family Residential (R-1C) zone, at 3002 Montavesta Road (Council District 5).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not adversely affect the public health, safety or welfare. It will not be out of character with the existing neighborhood, as many homes in this subdivision have fenced rear and side yards. Allowing the slight increase in fence height will not have any effect on the sight triangles of the driveways of either the existing property or the neighboring driveway on Clair Road.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance, as fences are common in the side street side yards.
- c. The existing topography on the subject property, sloping downward to the rear property line, creates a unique circumstance that justifies the requested variance to the fence height.
- d. Strict application of the Zoning Ordinance would require that the fence be shortened by two feet, only for that portion of the fence that is in the required side street side yard - about 27 linear feet of the 116-foot rear yard fence.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather is a design response to the unique circumstances of this property. Furthermore, confusion regarding the height requirement at the time of the issuance of the fence permit has led to the need for a variance.

This recommendation of approval is made subject to the following condition:

1. The property shall remain as developed, in accordance with the submitted site plan and application.

Representation – Ms. Patricia Hill, applicant, was present.

Opposition – Ms. Stella Blakeman was present, representing Ms. Barbara Stephenson regarding the fence height. Ms. Blakeman distributed photos to the Board. She then said that Ms. Stephenson has lived at her residence for over 41 years and had never had any problems with the fence. When Ms. Hill bought the property, she put up the big fence. Ms. Blakeman said that when she was visiting Ms. Stephenson on one occasion, she went to pull out of the driveway and almost hit a woman and a child due to the fence height. She said that Ms. Hill has built the fence almost to the sidewalk. She did graduate the fence down, but still no one can see on the right side. They are asking that Ms. Hill graduate her fence down to where it would align with her house. Ms. Blakeman noted that it looks like a fort when coming down the street.

Board Questions – Mr. Griggs stated that if the fence was shortened it wouldn't have kept Ms. Blakeman from hitting anything or anyone. Ms. Blakeman said that it would, because the fence is all the way out to the sidewalk.

Chairman Stumbo asked staff about the topography of the property. Mr. Emmons responded that the unique circumstance for the additional fence is height is that the back of the property drops off a few feet. He said that it was not a willful violation. The applicant obtained a fence permit; in addition; it is not a matter of whether the fence can or cannot be there. He said, in this particular case, the fence is set back from the sidewalk about 4 feet. Mr. Emmons noted that the staff reviewed the sight triangle (and displayed the site plan on the overhead projector). He gave a brief explanation of their findings.

Mr. Glover stated that he did not see from the pictures any kind of slope or where the slope goes on the property. Mr. Emmons replied that he did not have an "on the ground" picture; but in looking at the 2-foot contour lines, he indicated the area where there is some slope on the property.

Mr. Glover asked if the 6-foot requirement was county-wide, for residential lots, and if it is a standard for back yard

privacy fences. Mr. Emmons replied that like most of the Zoning Ordinance, it applies evenly. It is up to the Board to determine if there are circumstances unique enough to justify a variance. Mr. Glover asked if a yard that slopes up and down is a unique circumstance. Mr. Emmons replied that, in and of itself, it is not, as there are sloping yards throughout the community.

Mr. Emmons said that a portion of the fence where the variance is being requested is the lowest part of the applicant's yard. He then presented a copy of the fence permit on the overhead projector. Mr. Glover asked if there is a discrepancy between the zoning regulations and what the permit says, what prevails. Mr. Emmons responded that the Zoning Ordinance is still the requirement. Mr. Glover then asked if Mr. Emmons was saying that the applicant built the fence in good faith; in reliance upon the permit. Mr. Emmons' response was that that was one of the factors that the staff considered as they were reviewing the situation in preparation for the staff report.

Ms. Moore asked for clarification as to whether or not the neighbors were objecting to the side yard fence. She asked if what Mr. Emmons was saying is that it is a matter of right- that that part of the fence is allowed to be 6 feet high; and even if the variance was denied, the back yard fence would be lower, but they have a right to the side yard fence as it is. She asked if they do or do not have a right to what is constructed behind the house. Ms. Emmons responded it 8- foot fence along rear property line that is, by the Zoning Ordinance regulations, that can only be 6 feet tall until it gets out of the required side street side yard. Ms. Moore asked even if the variance was denied did this mean the Board could not give the neighbors what they wanted, which was the lower fence. In response, Mr. Emmons replied that the majority of the fence as it is built would be allowed to remain as is.

Mr. Glover stated that it appeared to him that, from the picture shown, the 8 foot section of the fence is in the applicant's backyard and the neighbor's side yard. Mr. Sallee responded affirmatively. Mr. Glover asked if the backyard of the applicant's fence is in compliance (except a few feet). Mr. Sallee said that, except for 30 feet, yes, it is in compliance with the Ordinance.

Mr. Glover said; as he understood, that the objection was for the driveway's sight triangle. Mr. Emmons replied that it is compliant with the sight triangle as it is regulated in the Zoning Ordinance.

Applicant Report – Ms. Patricia Hill, who currently lives at 3112 Clair Road but also owns 3002 Montavesta Drive, stated that she has lived in her residence for 23 years. She said that she had purchased the subject home with the intent to reside in it upon her “resurrecting it from the dead.” Ms. Hill said that the yard does have a pool. She has a disabled son who suffers from panic attacks and social phobia, and he has to have a private space. She said there was a rusted, chain link, 6- foot fence that had been “eaten up” prior to her purchase, and she wanted to replace it. Ms. Hill said that she put up the 8- foot privacy fence because there was no privacy between her residence and the neighbors in the back.

Ms. Hill gave a brief history as to why this request seemed extreme and why she did what led to the variance request. She said that a mother and then her son lived in the house on the subject property for 45 years, and neglected it for many years. It has always been fenced to be even with the house. She said that it has never been questioned, in 45 years; the right to pull the fence closer to sidewalk. Ms. Hill said that she did everything required of her and does not understand why the permit was wrong.

Board Questions – Mr. Glover questioned the permission to increase the height of the fence. He said that it sounded as though, if the Board granted this application, the applicant could build an 8-foot fence all the way around the yard. He asked if permission needs to be granted at the corner and only for a few feet on either side of the corner. Mr. Emmons said that the staff's recommendation of approval was subject to a single condition, but a very strong condition-that the property shall remain as developed and in accordance with the submitted site plan. He said that it is not a variance that would allow any additional height to the fence in the future.

Opposition Rebuttal – Ms. Blakeman responded that the way Ms. Stephenson's house sits, the fence is right in her front yard. She said it is like looking at a big wall from her front door. Ms. Blakeman said that, regarding Ms. Hill's pool, no one would be able to get over into the pool with a 6-foot fence. She said that a 4-foot fence had been there for at least 40 years. She said that Ms. Hill did ask Ms. Stephenson if there was a problem; and if she was the one who complained, and Ms. Stephenson told her yes. Chairman Stumbo stated that the fence in no way encroaches on Ms. Stephenson's property; it just blocks the view. Ms. Hill responded that the reference to the existing 4-foot fence is not true; it was 6 feet tall.

Action - A motion was made by Mr. Glover, seconded by Ms. Whitman; and carried 5-1 (Griggs opposed; Meyer absent) to **approve V-2014-53: PATRICIA G. HILL** – an appeal for a variance to increase the maximum allowable fence height from 6 feet to 8 feet in order to allow it to remain as constructed in a Single Family Residential (R-1C) zone, at 3002 Montavesta Road, for the reasons recommended by staff, the testimony that

was heard, and subject to the one condition.

E. **Conditional Use Appeals**
(Discussion Items- cont.)

1. **C-2014-55: YMCA OF CENTRAL KENTUCKY** - appeals for a conditional use permit to establish a child care facility for up to 250 children in a Planned Neighborhood Residential (R-3) zone, at 3251 Beaumont Centre Circle (Council District 10).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit to establish the child care facility should not adversely affect the subject or surrounding properties. No aspect of this request, if approved, should significantly alter its existing relationship with the subject property or the surrounding properties.
- b. Adequately designed facilities exist for the proposed child care operation. Sufficient parking, pedestrian features, landscaping and buffering, required play areas, and infrastructure are all in place.

This recommendation of approval is made subject to the following conditions:

1. The child care center and summer camp child care shall accommodate a total of no more than 250 children enrolled, from age 5 to 13 years, operating daily Monday through Friday between the hours of 7:15 AM and 6:00 PM.
2. A minimum of 6,250 total square feet of indoor/outdoor play area shall be provided for the child care center, with outdoor areas to be fenced and screened in accordance with the requirements of the Zoning Ordinance.
3. All necessary permits, including but not limited to a Zoning Compliance Permit and Certificate of Occupancy shall be obtained from the Divisions of Planning and Building Inspection prior to operation of the child care use.

Mr. Emmons noted that the staff had received several letters in opposition that he distributed to the Board at this time.

Representation - Mr. David Martirano, president and CEO of the YMCA, was present. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Board Questions - Chairman Stumbo asked if this request was for a summer camp in addition to the child care for up to 250 children. Mr. Martirano responded that, it is to get licensed for the school-age childcare, and the after-school enrichment program that the YMCA presently serves, as well as the summer camp program that is presently served.

Ms. Moore asked if it was correct that they have been operating for 2 years without a conditional use permit. Mr. Martirano replied that they had been operating through child care licensing (Kentucky Youth Camp Permit), which is allowable by the State. Ms. Moore again asked if the YMCA has been operating this use for 2 years without a conditional use. Mr. Martirano responded that they have only been working through a child care licensing until this time. Chairman Stumbo asked staff if they were required to obtain a conditional use permit. Mr. Emmons replied that there are multiple levels of licensing at the State, and youth camps and summer programs are not required to be considered a child care center. Now that the applicant is trying to switch over at the State level from what they were previously doing, because youth camps are not defined in the Zoning Ordinance, it requires them to have a conditional use permit; the YMCA has never been approved for a child care center.

Ms. Moore questioned the difference between the uses. Mr. Sallee displayed the definition of a community center on the overhead projector and gave a brief description. Mr. Griggs asked when the YMCA established itself- if the subdivision was pre-existing or if the YMCA was part of the overall development plan. Mr. Martirano replied that it was both; some of the subdivisions were in place before the YMCA, and some nearly at the same time or shortly thereafter. Mr. Griggs then asked how many acres they currently have. Mr. Martirano replied that he thought it was 12. Mr. Griggs then asked if they had any loud outdoor activities. Mr. Martirano responded affirmatively. Mr. Griggs then asked what how many they had outside from morning to night. Mr. Martirano said that typically it was all of them; he said that this summer they had approximately 245; however, child care licensing would limit the amount of children the YMCA would be able to serve on site. If they continue on with the camp permit, there would be an unlimited amount of children they would be allowed to have.

Mr. Griggs asked if the camp activity was just in the summer. Mr. Martirano replied affirmatively, but said they would like to start an afterschool program. Mr. Griggs asked if there have been any meetings held with the

neighborhood. Mr. Martirano responded that, over the last 2 weeks, there had been. Mr. Griggs stated that the time (7:00 a.m. and the number of children (250) are disturbing to him. He asked if this was accurate, or if there was something that could be done to bring down that number. Mr. Martirano said that they do not all come at 7:00 a.m.; some come after 9:00 a.m., but the drop-off opportunity can begin at 7:15, and they are working with the neighborhood to explore different locations for the drop-off. Ms. Moore then asked if it was possible to have a drop-off area provided, and have the children stay inside the building until 8 or 9. Mr. Martirano replied that that is something they can explore.

Mr. Glover asked what it was that the YMCA is not doing now, that they want to be able to do from this time forward. Mr. Martirano said that this is about the opportunity for lower income families to receive state assistance. If the summer camp was licensed; that could help fund some of that portion of the cost so they could participate. Mr. Glover then asked what the difference was between the number of kids, and the time of service. Mr. Martirano stated that with the state licensing, there are requirements of how long a child can stay outside (as an example). Depending on how many kids the YMCA was servicing, the programming and the scheduling there could potentially be fewer children outside, because there are only so many time frames depending on the age group. Mr. Glover asked if they would be serving more children or fewer children and if this would be year-round. Mr. Martirano said they would be serving up to the same amount or fewer, but no more. During the school year, it would only be about 40 children.

Ms. Moore asked if the hours requested of 7:15 AM-6:00 PM for the summer and 3:00 PM-6:00 PM during the school year were correct. Mr. Martirano said he would prefer to list 2:45-6:00 for the school year because for the primary service areas, the dismissal is a little different. Ms. Moore noted that she would recommend that this be included in the listed conditions, and also that she would recommend that the children stay inside until 8:15 a.m. Mr. Martirano responded that they would agree to that. Ms. Whitman stated that part of the YMCA's education is to teach children to not be disruptive.

Mr. Glover asked how close the YMCA was to the nearest residential use in the residential zone, and whether houses were abutting the Y's property line. Mr. Martirano referred to the photo on the overhead projector and stated that he opined there is a separation provided by the floodplain that goes through this site.

Mr. Glover then asked about the YMCA's relationship with "Kids R Kids". Mr. Martirano said that overall, it is improving, and overall, it has been good over the years. Mr. Glover asked would they say they are in competition with Kids R Kids. Mr. Martirano replied that they are not.

Ms. Anna Dennis, director of Kids R Kids, stated that she wanted to clarify that they are licensed for children up to 13 years old and will be in competition with the YMCA. She said that Kids R Kids also has a summer program, and their fence line backs up to the YMCA property.

At this time, Mr. Sallee read the new condition that was mentioned earlier. The changes made were to condition #1 and an added condition #4, and displayed on the overhead projector. They were: 1) The child care center and summer camp child care shall accommodate a total of no more than 250 children enrolled, from age 5 to 13 years, operating daily Monday through Friday between the hours of 7:15 AM and 6:00 PM during the summer, and from 2:45 PM until 6:00 PM during the school year; and 2) Outdoor activities shall be limited to after 8:00 AM.

Chairman Glover asked Mr. Martirano if these changes were acceptable; Mr. Martirano agreed.

Action - A motion was made by Ms. White, seconded by Mr. Griggs; and carried unanimously (Forester recused; Meyer absent) to **approve C-2014-55: YMCA OF CENTRAL KENTUCKY** – an appeal for a conditional use permit to establish a child care facility for up to 250 children in a Planned Neighborhood Residential (R-3) zone, at 3251 Beaumont Centre Circle, for the reasons recommended by the staff and subject to the four conditions recommended by the staff, as a revised during this hearing as follows:

1. The child care center and summer camp child care shall accommodate a total of no more than 250 children enrolled, from age 5 to 13 years, operating daily Monday through Friday between the hours of 7:15 AM and 6:00 PM during the summer, and from 2:45 PM until 6:00 PM during the school year.
4. Outdoor activities shall be limited to after 8:00 AM.

F. **Variance Appeals**

(Discussion Items cont)

1. **V-2014-62: HARMONY HB, LLC** - appeals for a variance to reduce the required side yard from 3 feet to 2

feet in order to allow an air conditioning condenser unit to remain where located in a Planned Neighborhood Residential (R-3) zone, at 153 Towne Square Park (Council District 2).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested variance should not adversely affect the subject or surrounding properties and will not adversely affect the health, safety or welfare of this neighborhood. It will not be out of character with the existing homes in neighborhood, as some of the properties in this neighborhood do have HVAC units in the side yards, due to those yards being greater than the minimum requirement of 3 feet. In particular, there will be a total of 9 feet between the subject house and the neighboring house.
- b. Granting the requested variance will not be an unreasonable circumvention of the Zoning Ordinance, as there will be no other obstructions in the side yard; and maneuverability and accessibility around the condenser unit will not be compromised.
- c. The existing 5.5-foot side yard on the subject property, in conjunction with the rear garage access to the alley, creates a unique circumstance that justifies the requested variance for the relocation of this air conditioning unit. With the larger 5.5-foot side yard on the subject property, the space between the two homes will be well in excess of the minimum 6 feet of separation required by the Zoning Ordinance.
- d. Strict application of the Zoning Ordinance would require the HVAC unit to be moved to the other side of the house; which would create a nuisance to the property owner's enjoyment of the patio area. It would also require much interior demolition to relocate the unit to the other side of the house, which would result in an unnecessary hardship to the appellant.
- e. The requested variance is not a willful violation of the Zoning Ordinance, but rather is a design response to the unique circumstances of this property.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Division of Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a Certificate of Occupancy from the Division of Building Inspection.
3. No other obstruction, including a fence, will be allowed in this 5.5-foot side yard.

Representation - Mr. Jon Strom, was present representing appellant.

Opposition – Ms. Charlotte Arnett, who lives at 157 Town Square Park, said that she was concerned about the noise that comes from the two air conditioning units that sit in between the subject property and her property.

Board Questions - Chairman Glover asked the staff if noise was ever a consideration in their case report. Mr. Emmons stated that the staff report did not specifically address noise of the units. He said that the staff's recommendation looked at the 5 ½ foot side yard, which allows an access in the 3 foot side yard that is required. Mr. Emmons then gave a brief summary of the staff's report and reasoning for recommending approval for this request.

Mr. Glover asked for a photo to be displayed on the overhead in order for him to get a visual as to where the subject property is located. Mr. Emmons presented the photo and gave a description as to the location. Mr. Glover asked if the subject property was an existing Single-Family home, and if that what was being shown on the overhead. Mr. Emmons responded that the aerial photos are from 2013, and the corner lot that was being observed was vacant in the photo, and the house in the photo was the next door property.

Applicant Comments - Mr. Strom said that when they chose to put the air conditioning units on the side of that house that is it is on, they decided to look at the 5 ½ foot side yard that was there. They decided in order to give homeowners as much use as they could with the side of their yard, and there was enough space to fit the HVAC unit.

Mr. Strom stated that they did this because the property had a rear facing garage (where they come in from the back), and it would have been difficult to place the unit there. He said they put it on the side of the house because they believed there was enough room there, but when it was installed is when they realized that that it encroached 1 foot. Chairman asked if Mr. Strom was saying there wasn't enough room in the back of the house. Mr. Strom responded that they were trying to be more convenient for the homeowner. When they looked at the 5 ½ feet, the unit was only a couple feet wide, and when they went to install it, they were required to slide it out from the house about a foot, which is what moved it one foot into the sideyard.

Board Questions – Mr. Griggs asked Mr. Strom if he had visited this site. Mr. Strom responded affirmatively. Mr. Griggs then questioned the distance between the neighbor's sideyard, and their house, - which was a

total of 9 feet. Mr. Strom responded affirmatively. Mr. Griggs then stated that he (Mr. Strom) doesn't say anything in their application about the fence that the neighbor has around their patio. Mr. Strom stated that he was just referencing that there is still adequate space to step between the fence and the air conditioning unit. There was then some back and forth discussion between Mr. Griggs and Mr. Strom about the space between the neighbors' yard and the air conditioning unit.

Mr. Griggs then spoke about the possible noise issue. He noted that in the staff report, it talks about how the applicant wanted the new residents to enjoy their outdoor patio area without the noise and unsightliness of the unit on the side of the house where the patio is located. However, when the unit was installed, it was moved closer to the neighbor's house. Mr. Strom responded that when they initially laid out the air system, there was 5 ½ feet on the side, but once installed, they discovered that it was only 2 feet. He said that it was a mistake on their part in the measurement and not taking into account the extra foot.

Mr. Griggs questioned whether it would be necessary to demolish the inside of the interior of the house to move the air conditioning condenser unit. He said that right now, it is on one side of the garage and the garage has an attic above it. He stated that all the lines are on one side of the garage and all that could be done would be to move the lines over the garage and move them down to the other side of the garage. Mr. Griggs then asked how that would affect the interior of the house. Mr. Strom responded that because he is not a home builder, he had to discuss this with the builder, and the builder informed him that they would have to rip out drywall and move it to different places in the home, and then refinish everything that was done in the place. The builder would have to pull the lines that are out from the house; replace the siding that was on that side; and cut into the siding on the other side of the home. Mr. Griggs replied that nothing would have to be done to the interior of the house, and then explained what could be done to avoid all the other items.

Mr. Griggs stated that he had sympathy for the objector due to the fact that she does not want the noise on the other side of her patio (3 feet away from her patio) so that the applicant could have a patio on the other side that has no noise. He said that the arguments of the applicant didn't seem circumstantial, and he couldn't support this application.

Mr. Glover asked the staff if their thinking had been altered after hearing the objector. He said that some of his concerns were being able to get equipment between to the two properties such as the fire department getting their equipment through, lawn mowers etc. He then asked if the staff have heard of any safety issues.

Mr. Emmons responded that he was unaware of the neighbor's fence when the staff report was being written. He said that when staff was reviewing this application, they, too were seeing that there would be 2 feet in the side yard and that there would still be room to get around the units; is what the staff meant when it was said in the staff report.

Mr. Glover asked applicant if the house had already been built; and if the neighbor's house had already been built; and if the fence had already been built. Mr. Strom responded to all questions affirmatively. Mr. Glover then asked if the air conditioning had already been installed. Mr. Strom responded affirmatively. Mr. Strom said that they had already closed on the home and were awaiting the final CO. Mr. Glover asked if Harmony owned other homes in the area. Mr. Strom said yes. Mr. Glover asked if there would be any other houses or proposed houses that would be faced with the same issue. Mr. Strom said that two houses down from subject property, would be the last house in this area, and it is almost complete so there should not be any further homes that would require this.

Mr. Griggs stated that when considering a variance, there are supposed to be special circumstances, and this is a flat lot that has not special circumstances to require a variance. He also stated the situation here is completely the result of the applicant's own actions. Mr. Griggs then said that another thing the Board is supposed to consider is that the variance would not create a nuisance for somebody, and this does.

Note: Chairman Stumbo declared a brief recess at 3:06 p.m. The meeting reconvened at 3:15 p.m. with the same members in attendance.

Action - A motion was made by Mr. Griggs, seconded by Ms. Moore; to **disapprove V-2014-62: HARMONY HB, LLC** – an appeal for a variance to reduce the required side yard from 3 feet to 2 feet in order to allow an air conditioning condenser unit to remain where located in a Planned Neighborhood Residential (R-3) zone, at 153 Towne Square Park, for the following findings:

- 1) The granting of the variance will create a nuisance in the vicinity and specifically to the neighbor.
- 2) The granting of the variance is not based on a special circumstance in the general vicinity.
- 3) The circumstances are the results of the actions of the applicant installing the 2 air conditioner and condensing units to an area in violation of the Zoning Ordinance when other locations are and were

available.

The motion failed 1-3 (Glover, Whitman and Stumbo opposed, Forester recused; Meyer absent)

Action - A motion was made by Ms. Whitman seconded by Mr. Glover; and carried 3-1 (Griggs- Opposed; Forester recused; Meyer absent) to **approve V-2014-62: HARMONY HB, LLC** – an appeal for a variance to reduce the required side yard from 3 feet to 2 feet in order to allow an air conditioning condenser unit to remain where located in a Planned Neighborhood Residential (R-3) zone, at 153 Towne Square Park, for the five reasons provided by staff and subject to the three conditions provided by staff.

G. Conditional Use Appeals
(Discussion Items cont)

1. **CV-2014-60: KELLY NURSERY, LLC** - appeals for a conditional use permit to establish a plant nursery and a commercial greenhouse; and a variance to reduce the required front setback from 300 feet to 35 feet in order to construct an accessory structure in the Agricultural Rural (A-R) zone, at 4961 Paynes Mill Road (Council District 12).

The Staff Recommends: Approval of the conditional use, for the following reasons:

- a. Granting the requested conditional use permit for a combination plant nursery and commercial greenhouse should not adversely affect the subject or surrounding properties, as the proposed plant nursery and a restricted commercial greenhouse will be buffered via existing and proposed landscaping, and will be restricted in scale such that there will be no customers or sales on site.
- b. All necessary public facilities and services are adequate for the proposed use including the new accessory buildings and graveled driveway that are anticipated for this use.

The Staff Recommends: Approval of variances to: 1) reduce the required front setback from 300 feet to 70 feet for an accessory structure; 2) reduce the required 300-foot setback from the nearest residential structure along the side of the property to 175 feet; and 3) reduce the required 100-foot setback of the driveway from the nearest adjoining property to 60 feet, for the following reasons:

- a. Granting the requested variances will not cause a negative effect on the subject or surrounding properties and will not cause a public health, safety or welfare problem. It will not alter the character of the general vicinity, as there is already an established 70' setback for accessory structures on this property and the neighboring property. Furthermore, the variances for the accessory greenhouses and driveway are justifiable due to the unique circumstances of this request.
- b. This request for a variance is not an unreasonable circumvention of the Zoning Ordinance; but, rather, is justifiable due to the unique circumstances associated with this property.
- c. The existing alignment of two other nearby accessory structures, the relatively small size (4 acres) and shallow depth (430') of the subject lot, the sloping topography, and the fact that a barn and other accessory buildings used solely for agriculture on this property could be constructed in this location are all unique circumstances that justify the requested variance.
- d. Strict application of the Zoning Ordinance would require that the new barn and accessory greenhouses be moved to a less desirable location on the farm and would likely require them to be built on an area of steeper slope, with a longer driveway needed for access.
- e. The requested variance is not a willful violation of the Zoning Ordinance, as no construction has begun; and the applicant learned of the need for these variances during the normal building permit and conditional permit review processes.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, allowing minor modifications, if required, by the Divisions of Engineering; Traffic Engineering or Building Inspection as a part of the normal permitting procedures.
2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the residence prior to construction.
3. On-site sales of plants or other materials (including those specifically listed in the definition of a commercial greenhouse) shall be prohibited without further review and amendment by the Board of Adjustment.
4. The entrance to Paynes Mill Road shall be modified, as necessary, including but not limited to the removal of the existing vegetative hedge on the property, to ensure a safe sight distance. This will be subject to the approval of Traffic Engineering and/or the Kentucky Transportation Cabinet, as necessary.
5. This property shall comply with the Engineering Manuals concerning storm water; and, if necessary, a storm water management plan shall be submitted to, and accepted by, the Division of Engineering.
6. The applicant shall install a 25' wide landscape buffer on the eastern property line, with a combination of

- deciduous and evergreen trees and shrubs, to the approval of the Division of Building Inspection.
7. There shall not be any loudspeakers installed or utilized on the property.
 8. All lighting, if utilized, shall be installed with shields that direct the light away from all adjoining property lines.
 9. The existing septic system shall be reviewed and approved for the proposed use by the Department of Health.

At this time, Mr. Emmons announced that the staff had received several letters about this application. He then distributed them to the Board for review. Mr. Emmons said that one letter was in opposition of this request.

Representation - Mr. Todd Kelly, who lives at 3504 Arden Place, was present, and he indicated that they had reviewed the recommended conditions and agreed to abide by them.

Chairman Stumbo stated he saw in Mr. Kelly's email where he was addressing one of the neighbor's concerns, which was operating without the use of cold frames. Mr. Kelly replied that after learning of the opposition, they met with some of the neighbors and learned that one of their main concerns was the visual affect of the cold frames, so they agreed to decrease the intensity of that part of the operation.

Opposition – Mr. Eric Johnson, who lives at 4995 Paynes Mill Road (next door to the subject property); stated that his property overlooks the subject property. He said even in the winter, he would still be able to see the operation going on. Mr. Johnson said that other concerns he had was with the additional traffic associated with the use, the noise, and the run off pollution. He stated that one of the reasons his family moved to the country is to get away from this type of activity; as they live out there for tranquility.

Mr. Johnson said other problems that he sees with the proposed greenhouses are, sitting the equipment around, muddy roads, pallets, mounds of dirt, etc. He said one of the biggest issues that they are running into is that his property has a lake on it, and all the run off water from subject property and other properties run into his lake. He said that the applicants are saying that they are not using pesticides and fertilizers, but opined that "what other people don't know is going to hurt them", and believed that the applicants are going to use them. He then said that the water also runs out of his property, down through a field, and into Elkhorn Creek.

Mr. Johnson, said other initial concerns that they had were the lighting, but that was addressed by Kelly Nursery. Mr. Johnson said that other concerns were property values; because if someone puts a business beside his property, he may have trouble selling his property. He also said if this is allowed, it would it set precedent.

Mr. Johnson said that there are farms that are PDR protected to keep subdivisions housing at a minimum; they increased the acreage in the area from 10 to 40 to build a house on, which limited the housing options.

Board Questions – Mr. Glover asked Mr. Johnson if he was farmer. Mr. Johnson replied that he raised grass, and was just mowing. Mr. Glover asked if Mr. Johnson knew of any regulations that govern Agricultural run off into the streams or lakes in Kentucky- say from the Division of Water. Mr. Johnson advised that he was not aware of any. Mr. Glover then asked if the subject property was in his watershed. Mr. Johnson responded affirmatively. There was then some brief discussion about the watershed and the subject property.

Mr. Glover referenced the letter received from staff in opposition, stating that this is a small piece of property, and asked staff how big the subject property was. Mr. Emmons replied that the property is 4-acres in size.

Opposition (cont) – Mr. Richard Bennett, who lives at 4901 Paynes Mill Road, whose property directly abuts the subject property. He said he wanted to know if the application form received from the Kelly's was going to be entered into the record. Mr. Sallee responded affirmatively. Mr. Bennett then said that the stretcher is the only one being utilized; no hoops are going to be erected. He said that another concern he had was whether this would set precedent. He wanted to ascertain whether this business would not expand for future owners. Mr. Bennett said that they would like to keep character of the area to be upheld.

Applicant Rebuttal – Mr. Kelly said that they will not open for sales out of the property; because they have a sales location on Manchester Street. He said that they are restricted from having any sales. Mr. Kelly said in reference to the run off, he was not sure how the drainage flows, but they will attempt to re-use gray water as much as possible. He said as for the pesticides and fertilizers, they use plant base fertilizers and they spray a little fungicide. Mr. Kelly said that he did share all the neighbor's concerns and has tried to address most of them.

Board Questions – Mr. Glover asked what is the purpose of Mr. Kelly's request if he is not selling the products. Mr. Kelly replied that they grow them on the subject property, but sell them at a different location. He said that they do not have customers at their Jessamine County nursery.

Mr. Griggs referenced Mr. Bennett's suggestion, and asked the ownership of the property changed, could the conditional use is null and void. He asked if Mr. Bennett would have an issue with that if the Board added that in the conditions. Mr. Bennett replied that that would be fine with him. Mr. Griggs reiterated that Mr. Kelly would not be able to sell the property as nursery. Mr. Bennett agreed.

Applicant Rebuttal (cont) – Ms. Cynthia Kelly, part of Kelly Nursery stated for the record that they do not currently own the property; and they are looking at the property only if they are allowed to move forward. She said that there would be no free-standing signage, and they will be living there also- requiring a separation of business and home uses.

Opposition (cont) – Mr. Walker Sloan, who lives at 5146 Paynes Mill Road said that the Kelly's proposed some significant structures. He said one of his concerns was the commercial aspects of this proposal. They will have several employees coming to the site daily, which will impact the character of the neighborhood. Mr. Sloan opined that this would establish a precedent. He then referred to the definition of agricultural use in the Zoning Ordinance.

Board Questions – Mr. Glover asked the staff if they felt this would create a precedent. Mr. Emmons responded that these uses are allowable conditional uses in an A-R zone. He said that it is no different than any other application. Mr. Glover asked if this application satisfies all conditions in Article 8-1(d)(5). Mr. Emmons said that staff is recommending approval as it was stated on the application and in the staff report, which is different from the original request.

Opposition (cont) – Ms. Janet Fisher, who lives at the corner of Paynes Mill Road and Redd Road; has lived there for 20+years. She stated that she had to convince Woodford County to provide water to her home 10 years ago; and they said it was not supposed to be used for any type of irrigation.

Applicant Comments – Mr. Kelly stated that 90% of their drip irrigation requires low volume, low pressure water, which both conserves water and reduces run off.

At this time, the Chair said if there were no more questions for applicant, staff, or Board that he would entertain a motion. Mr. Sallee stated that prior to a motion the staff had an additional condition to present on the overhead projector, based upon the previous discussions.

A citizen in the audience then questioned the wording in condition #2 as to whether or not it should be worded "barn" verses "residence." Mr. Emmons said that the residence on this property is in existence, and not intended to be a part of this application. Mr. Emmons advised he was changing the revised wording.

Mr. Griggs questioned the question of Mr. Sloan in regards to the property needing to meet a 5 acres threshold. Mr. Sallee explained that the 5 acre requirement is part of the agricultural use definition in the Zoning Ordinance, and also comes from Chapter 100 of KRS. That part of the definition has been on the books for at least 30 years. There was some brief discussion of the agricultural use definition and the portion of it that references a minimum of the 5 acres.

Action - A motion was made by Mr. Glover, seconded by Ms. Whitman; and carried unanimously (Meyer absent) to **approve CV-2014-60: KELLY NURSERY, LLC** - an appeal for a conditional use permit to establish a plant nursery and a commercial greenhouse; and a variance to reduce the required front setback from 300 feet to 35 feet in order to construct an accessory structure in the Agricultural Rural (A-R) zone, at 4961 Paynes Mill Road, for the reasons recommended by staff and subject to the ten conditions recommended by staff, as amended as shown on the overhead:

2. All necessary permits shall be obtained by the applicant, including but not limited to, a building permit for the ~~residence~~ barn prior to construction.

10. This conditional use shall be null & void, should the appellant no longer own the property.

2. **C-2014-10: LEXINGTON FRIENDS MEETING** - a request to amend an existing conditional use permit to allow childcare for 80 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Avenue (Council District

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, as an institutional/church use has occupied this property for approximately 60 years, and the Lexington Friends Meeting has successfully operated at this location since 2000. The expansion of the use to allow a day care center during the week is a logical and efficient use of the established facilities, and is common at many churches throughout this community. Furthermore, adequate parking will be available on site, and the church intends to significantly increase the amount of green space behind the church.
- b. All necessary public facilities and services are available and adequate for the proposed expansion.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the approved site plan and application, allowing for slight modifications to the drop-off area and parking lot design during the normal permitting process, subject to the review and approval of the Divisions of Planning, Building Inspection, Traffic Engineering, and Engineering.
2. All applicable permits, including a Building Permit, Zoning Compliance Permit, and Certificate of Occupancy, shall be obtained by the applicant from the Divisions of Building Inspection and Planning.
3. The facility shall at all times operate in compliance with the regulations of the Kentucky Cabinet for Health and Family Services.
4. The applicant shall maintain and/or replace the parking lot perimeter landscaping and buffering, including but not limited to: the vegetative buffers along the street frontages and the fence where it adjoins the neighboring residential properties. Landscaping and buffering shall meet the requirements of Article 18, except where specifically varied by the Board of Adjustment in cases CV-90-129 & CV-94-51, and shall be completed within 90 days of the Board's approval.
5. The maximum enrolment is limited to 60 children.
6. The hours of operation shall be from 6:30 am to 6:00 pm, Monday-Friday.

Mr. Emmons distributed several letters of opposition to the Board at this time.

Representation - Ms. Chris Westover, attorney for the appellant, was present, and she indicated that they had reviewed the recommended conditions and agreed to abide by them. They amended their application in order to respond to the neighborhood concerns about the intensity of the use, and they have substantially reduced the number of children for the daycare center. They have also changed the time that the daycare center opens so that it would have less impact upon the neighborhood. She said that this church has been a friend of her family for a long time. She also said that she had with her several other representatives of the Friends. Ms. Westover presented the Board with some letters of support for their request.

Board Questions – Chairman Stumbo said that one of the letters received was from a neighbor whom could find the proposal acceptable- with some additional changes; namely the entrance and exit on Delcamp; a reduction in the number of children; and with a time change. He then asked if Ms. Westover's client would agree to those alterations. Ms. Westover responded that they cannot agree to those, and then gave an explanation as to why not.

Opposition – Mr. Richard Stevenson, who lives at 453 West Sixth Street, and who has lived there for 30 years; said that when the request came about, Eric Elliott, who lives at 616 Price Avenue, was chosen as the neighborhood's Liaison with the Lexington Friends Meeting. He was hoping to be at this hearing, but was unable to, but he asked Mr. Stevenson to read into the record, an email that he sent to the Planning staff prior to this hearing. Chairman Stumbo asked if he was talking about the 2 page document that was submitted to the Board members, who had already read it. Mr. Stevenson asked, since it was already read, if it was a part of the record. Chairman Stumbo responded affirmatively.

Mr. Stevenson said that what he wanted to further comment on why they wanted the number of children reduced from 60 to 40 (initially the applicant had requested 80, but this was reduced to 60). They also wanted to request that the opening time change from 6:30 a.m. to 7:00 a.m.; and that the entrance and exits to Delcamp be widened.

Mr. Stevenson discussed briefly on the change brought to this are because of the Sixth Street Brewery. He said that West Sixth developed the upper level of the building, and that they anticipated approximately 120-150 employees who will be using the facilities, which could cause another impact with traffic and parking. They are feeling overburden with the impact of traffic and parking upon their neighborhood.

Ms. Ann Stith, who is a neighbor of the applicant said that their street is a residential street. Unlike other

childcare applications heard today, the objectors at this hearing, all back up to the backyard of the subject property. Ms. Stith said that the parking lot was once 4 separate residences, with 4 separate driveway entrances. She said that her concerns were particularly about the corners of Price Avenue and Delcamp. She said that if traffic approaches from North Broadway onto Delcamp, and makes a left onto Price, it would enter the first driveway into the subject property's parking lot. The temptation would be to "caddy corner" that turn because the driveway is so close to the corner. Ms. Stith noted that the letter her husband and she had wrote to the Planning staff, pointed out the location of where the change in driveway is that they would like to see. It is further down Delcamp, at the northern most corner of the subject property.

At this time, Chairman Stumbo asked staff to present a photo of Ms. Stith's proposal on the overhead projector. Ms. Stith then said that there is a similar traffic problem at the corner of Jefferson and Sixth Street, caused by the brewery. Ms. Stith did a brief orientation of what she was trying to explain, and said that these are tight corners.

Ms. Stith said that she would also like to request that a condition is added that if the church changes hands, that the conditional use be null and void.

Ms. Cindy Rullman, who lives at 607 Price Avenue, said that she has nothing against the proposed daycare, but that she agreed with the neighbors in concern of traffic, safety, and the number of children being reduced. She said that she would like to request that the Board grant their requested changes.

Mr. David Stith, who lives at 607 Price Avenue, said that he and his wife have lived at his residence for 31 years. He said in reference to Mr. Elliott's email; it expresses concerns of the group as a whole. Mr. Stith said that he also speaks on behalf of Ms. Ann Roach, who represents Delcamp Drive, but was unable to make it to today's meeting. Mr. Stith said that he wanted to add that he and his wife owned property at 460 Delcamp, and didn't think that adding an entrance at the corner would be that difficult; as it would allow the unusual configuration of the street to have an exit that would allow traffic to go directly to North Broadway, or directly to Sixth Street without making an additional L-shaped turn. Mr. Stith said that if the entrance was not added, it would cause all the traffic to enter onto Price Avenue, which would end up backing up to the "T" intersection at Sixth Street, or would devolve into the "L" shape that comes around the corner from the brewery.

Mr. Stith then discussed other activity in the area that could cause traffic problems, such as: 1) the vacant apartment complex at Coolivan (Sixth Street), in which cars are using the vacant area; 2) the police sub-station that houses the horses, in which they walk them through the traffic, as well as horse trailers that are being hauled by and forth in the traffic pattern as it goes in and out; and 3) a bus stop has been added at the corner of Jefferson and West Sixth Street, which stops and blocks traffic in the right hand lane of Sixth Street.

Mr. Stith said that in Mr. Elliott's letter, he mentioned that everyone in the neighborhood had signed a petition, with the exception of one family which was Mr. Stith. He said that he did not sign the petition due to his previous relationship with the applicant, and that he thought that their intentions were good, but didn't believe that they planned well enough for the proposed use. He would agree to sign it now in order to make it unanimous.

Board Questions – Mr. Griggs asked the Traffic Engineering staff if they had anything to say about the traffic concerns that were presented. Ms. Kaucher said that she didn't have any specific comments; however, Price Avenue is actually wider than Delcamp. The difference is that Price Avenue allows parking on both sides. Mr. Griggs asked Traffic Engineering if they studied this layout before it was paved, and is this the most optimized parking layout that was thought of, or was there a missed opportunity. Ms. Kaucher replied that she didn't think that there was a missed opportunity; and they had seen the plan. It was an existing parking lot, and they just repaved it. She said that she would not recommend changes. Mr. Griggs then asked if they thought the situation could be improved by providing entrances and exits off of Delcamp. Ms. Kaucher said that she didn't think that the neighbor's traffic patterns were going to change based on having the access point on Delcamp.

Ms. Moore said that if parking is a problem in the area, could parking spots be sold on the church property, and maybe compromise by having less kids. Ms. Westover said that she thought it would be difficult, considering that Lexington Friends Meeting have been trying to get a daycare operator into the site since they filed the application in January. Ms. Westover said that according to the Child Care Council, there is a minimal number of children needed in order to run a viable daycare, and if they tried to lease some of the parking spaces, she wasn't sure if it would be within 300 feet of the actual use,, which may require a

variance, if done. Ms. Westover said that another issue with Delcamp was that if there were parking with an access point on that street, then that might diminish the ability to provide parking spaces on their lot. Ms. Westover said that she would like for Ms. Betsy Neal to talk about this project.

Ms. Betsy Neal gave a brief history and ownership of 649 Price Avenue, Lexington Friends Meeting. She said that it is Quaker meeting space and a religious society of friends. They are small congregation of approximately 80 active members. She said that their weekly attendance averages about 30 adults and children. Ms. Neal said that Lexington Friends Meeting has been active since the 1960s. She said that the property was purchased in 2000, and they began holding their services there in January, 2001. Ms. Neal said that the building was renovated in 2013. She then displayed a picture on the overhead projector, and had a brief discussion on the history of this site.

Ms. Neal noted Ms. Westover's statement that they do agree to abide the conditions listed, but also wanted to note that one thing that was not mentioned was the fact that the design of the parking lot, currently, has a lengthy driveway and drop off area so that quite of number of cars (over 10) can sit on their lot while waiting to drop off or pick up children; so they do not anticipate standing traffic in the street.

Ms. Neal said that they have had 5 meetings with the neighbors, and their neighborhood representative, Mr. Elliott, in order to hear their concerns. They have amended their proposal for the operation of the daycare in response to their concerns; reducing the number of children; and changing the operating hours. She said that they want to cooperate with the neighborhood and would even offer their facility for neighborhood meetings.

Board Questions – Mr. Glover asked Traffic Engineering if they had done a traffic study in this area. In reply, Mr. Emmons distributed some information that he requested of Mr. Rob Hammons, Sr. Planner in the Division of the Planning. He explained the notes of Mr. Hammons and noted that this is not a traffic study. Mr. Emmons noted that this information was provided prior to the change in the number of children for this proposed use.

Action - A motion was made by Ms. Whitman, seconded by Mr. Glover; and carried 4-1 (Griggs opposed; Forester recused; Meyer absent) to **approve C-2014-10: LEXINGTON FRIENDS MEETING** - a request to amend an existing conditional use permit to allow childcare for 80 60 or fewer children and to add a play area and a handicap accessible entry in a Two Family Residential (R-2) and a Planned Neighborhood Residential (R-3) zone, at 649 – 659 Price Avenue, for the two reasons recommended by staff and subject to the six conditions recommended by staff.

Note: Chairman Stumbo declared a brief recess at 4:55 p.m. The meeting reconvened at 5:04 p.m. with the same members in attendance.

2. **C-2014-21: SOLAR ECLIPSE, LLC** - appeals for an amended conditional use permit to construct and operate a kindergarten/nursery school/child care center in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace Drive (Council District 10).

The Staff Recommends: **Approval**, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties; and, in fact, will have a positive effect by promoting shared access to Harrodsburg Road, increasing the landscape buffer along existing residential properties and continuing to provide for regional stormwater maintenance.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted site plan and application, or as amended by the Planning Commission on a final development plan.
2. All permits, including but not limited to a Zoning Compliance Permit, Building Permit, and Paving Permit, shall be obtained by the applicant from the Divisions of Planning and Building Inspection prior to construction.
3. The parking lot shall at all times be maintained to the meet the minimum requirements for landscaping and lighting in the Zoning Ordinance.
4. Any parking lot lighting employed shall be of a shoebox (or similar) style, so that light is directed downward and away from adjoining residential properties.
5. A detailed landscape plan that provides an equal level of protection, as proposed on the site plan, shall be submitted to and approved by the Division of Building Inspection before the issuance of a Zoning Compliance Permit for the subject property.

6. The Planning Commission shall review and approve a final development plan for the subject property prior to construction of the proposed use.
7. There shall not be direct vehicular access to Palomar Trace Drive from the subject property.

Representation – Mr. Dick Murphy, attorney for the appellant, was present, and he indicated that they had reviewed the recommended conditions and agreed to abide by them. Mr. Murphy distributed a handout to the Board at this time.

Staff Comments – Mr. Emmons announced that the staff had two housekeeping items on this case; the staff had submitted a supplemental report (on blue paper), which had some minor additions to the recommended conditions. He said also for the record, the staff was going to resubmit all the letters of opposition from the previous case of this applicant, however; the proposed conditional use request has been changed from a parking lot to a daycare center.

Representation – Mr. Murphy discussed the background of the application for the subject property. He said that this was before the Board in April 2014 for a requested parking lot, which was postponed. It has now been amended to request a daycare center for this conditional use permit. Mr. Murphy displayed several photos on the overhead projector as he gave a brief report on the reasons for this proposed request.

Mr. Murphy handed out several handouts to the Board; one being the discussion of the deed restrictions in the neighborhood, in which he said they do acknowledge.

Mr. Murphy presented their site plan on the overhead projector as he discussed a number of aspects of this proposed use, to include the traffic perspective, and the access point. He said that they consulted with the Kentucky Department of Transportation, who said that they could have that access point since Harrodsburg Road is a state controlled highway. However, they wanted them to remove the second, existing driveway to the proposed property, which is located down a little further on Harrodsburg Road; and they have complied with that request. It is proposed to be a joint access point off Harrodsburg Road, allowing traffic coming in and going out.

Mr. Murphy said that La'Petite's primary focus is on preschoolers, which means there is not a "daycare" rush hour when school "lets out. It is driven by the parents, not the schedule of the school.

He said that there will be no vehicular or pedestrian access between their property and Palomar Trace Drive. People will not be able to make a "cut through" in these areas. He said the concerns of people not wanting traffic in front of their homes would be met, as cars coming to the proposed facility would not be driving in front of any homes in this area.

Mr. Murphy briefly discussed buffering around the property. He pointed out on the photo on the overhead projector the areas he was referring to. It has been designed to have an open space area. Mr. Murphy distributed and discussed information in regards to where the buffering is in regards to the existing houses on adjoining properties.

In conclusion, Mr. Murphy briefly discussed the excerpts in his handout about the 2013 Comprehensive Plan. He then presented two small videos that showed his discussion points, in a perspective from the neighboring properties.

Objectors – At this time, Mr. Bruce Simpson went to the podium and advised that he opined it would be in the best interest of this hearing if there were anyone who was in favor of this proposed use, to speak now, and then their responses could be addressed during the opposition presentation. Mr. Murphy responded that there were several people who would like to speak that were not his clients. At this time, Chairman Stumbo called for anyone who was in favor of this use to come to the podium.

Citizen Comment – Mr. Michael Walsh, who lives at 2153 Palomar Trace Drive requested that this request be approved because he opined that it is an appropriate use for the property. It is underutilized acreage within the Urban Services Area. He said what is being proposed is consistent with existing and recently approved non-residential property within that immediate vicinity.

Mr. Walsh said that one supporter, Mr. Jinright, was at this hearing, but had to leave. He asked that he inform the Board that he was also in support of this proposed use. Mr. Jinright's property backs up to the subject property.

Mr. Walsh said that there were two issues that he wanted to address: 1) the value of the property. The

developer has plans to develop 15 other house on the other side of Palomar Trace Drive that could be in the neighborhood of \$400,000; that is going to a significant, positive impact on property values in that area; 2) the deed restrictions- This document can be amended with a majority vote of the lot owners in the neighborhood. He said that he opined that the current deed restrictions were impractical and unreasonable.

Board Question – Chairman Stumbo asked the staff if the deed restrictions supersede the Zoning Ordinances rules and Subdivision Regulations. Mr. Emmons responded that he would defer the answer to the Law Department, but that private deed restrictions are not enforced by the Zoning Ordinance or the Government. Ms. Jones, said that they do not really supersede the Zoning Ordinance, but the Board does not have a role in those, as; they are privately negotiated; they are privately enforceable.

Opposition Representation – Mr. Bruce Simpson, attorney, on behalf the Harrodsview Neighborhood Association, Inc.; Ms. and Mr. Beth and Louis Hairston; and Ms. and Mr. Mary B. and Ray Hall, who are all residents and live on Sallee Drive, distributed several handouts to the Board. Mr. Simpson spoke briefly on the history of Harrodsview, and he opined that it would significant as the Board considered the context of the entire development. Mr. Simpson then displayed a photo on the overhead projector and gave a report of the history of the area and its development from the year 1988 to the present, including information about the deed restrictions.

Board Question – Mr. Glover asked Mr. Simpson if he was asking the Board to decide upon the validity of the deed restrictions. Mr. Simpson said that he was only pointing out the substantial efforts over a number of years that the neighborhood (Harrodsview), and the previous owner went to, to ensure how the property would be developed, and that was for Single-Family Residential. Mr. Glover then said that if the deed restrictions are upheld, then it doesn't matter what the Board does or decides at this hearing. Mr. Simpson said that it doesn't, but what they are asking the Board to do is to consider the intent of how the property was designed to be developed; to recognize the commitments made previously, and to recognize that the appropriate use for it is for single family residential, instead of for a 10,000 square foot business, parking lot and outdoor play area. Mr. Glover then asked if the Board granted the request, wouldn't the deed restrictions still be in place. Mr. Simpson responded that they would have to go to court at the neighborhood's expense on a use that is incompatible and would have an adverse impact.

Opposition Representation – Mr. Simpson then presented and discussed some additional photographs in regards to the subject property and stated his belief of the incompatibility of the requested use.

Opposition – Mr. Louis Hairston, who lives at 2124 Sallee Drive said that when he bought his property, it was said that the deed restrictions would be heeded, so they specifically then developed their backyard with a pool to be able to enjoy the backyard as it was designed. He said that the deed restrictions ensured them that they could safely purchase the lot and construct an expensive home. If the daycare were already there, they would not have purchased the lot and home.

Representation Rebuttal – Mr. Murphy gave a brief summary in response to the opposition's concerns. He then responded to the following: 1) deed restrictions- in which they felt strongly that these do not apply at this hearing; 2) the need for them to be working with 23 people along Palomar Trace Drive in changing the design for the new houses; 3) changes in the area (to the trees- they will be adding trees; 4) stormwater issue- the water flows away from the neighborhood; and 5) the number of students- they will be accommodating about the same amount as the current center on Wellington Way. Mr. Murphy restated that this is not a new facility; it is already an existing facility in the neighborhood.

Citizen Rebuttal – Mr. Walsh said that he wanted to clarify that the map that Mr. Simpson presented of the Harrodsview Trace neighborhood, did not include Palomar Trace Drive. Mr. Walsh reiterated the deed restriction rules. Mr. Glover stated that the deed restrictions are out of the Board's hands; which have been made clear during this hearing.

Opposition Rebuttal – Mr. Simpson responded that he opined that this proposal is "shoe horn" in a business; increasing the size of an existing business by 33% into a backyard that has been nothing but a backyard for most of the last 60 years. He said that the consequences of this change in terms of motor vehicles, 60 feet away from Mr. Hairston's property line; its on shielded lights; new people coming in and out, people opening and slamming doors, talking and kids playing in the playground- up to 142 kids. This presents a host of reasons for this to be turned down. He said they request that this conditional use be turned down because it adds adverse to an existing neighborhood.

Board Questions – Mr. Glover asked Mr. Murphy if there was anything about the staff's recommendations and conditions that are incompatible with his proposed findings and conclusions. Mr. Murphy said that his

findings incorporated the staff's findings with the additional points he made at today's hearing. He said that if this case went on an appeal to the courts, he added additional items to withstand a judicial appeal that judges would probably look at. Mr. Murphy said that he did not mention the conditions because they agreed with the staff's reasons and conditions. However, they have some discussion to condition #6 with staff that could be discussed after the fact. Mr. Emmons stated that the staff has no objection to the additional findings that Mr. Murphy has proposed; on condition #6, the reasoning for that finding was from an earlier draft of the staff report, was from when it was a proposed parking lot that was tied to the P-1 next door; the staff would have no objection if the Board was to delete condition #6 should the Board choose to adopt those.

Action - A motion was made by Ms. Moore, seconded by Mr. Glover; and carried 5-1 (Griggs opposed; Meyer absent) to **approve C-2014-21: SOLAR ECLIPSE, LLC** – an appeal for an amended conditional use permit to construct and operate a kindergarten/nursery school/child care center in a Planned Neighborhood Residential (R-3) zone, at 2101 Palomar Trace Drive (Council District 10), for the reasons recommended by the staff and subject to the conditions recommended by the staff and to delete condition #6.

4. **C-2014-59: KARL SCHNEIDER** - appeals for a conditional use permit to construct an assisted living facility in a High Density Apartment (R-4) zone, at 4251 Saron Drive (Council District 8).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit for an assisted living facility on this property should not adversely affect the subject or surrounding properties. No aspect of this request, if approved, should significantly alter the existing relationship of the subject property and surrounding residential and commercial properties
- b. There are adequate facilities in the surrounding established area to serve all appropriate uses. Sufficient parking, pedestrian features, landscaping, stormwater management, and infrastructure are all in place
- c. The site is particularly well suited to the proposed use, in all respects

This recommendation of approval is made subject to the following conditions:

1. The facility shall be constructed in accordance with the submitted application and site plan or as amended by the Planning Commission on the required final Development Plan.
2. All necessary permits shall be obtained from the Divisions of Planning and Building Inspection prior to construction and prior to occupying the facility.
3. The parking lot shall be screened and landscaped in accordance with Article 18 of the Zoning Ordinance
4. The parking lot and layout, including access to Saron Drive, is subject to the review and approval of the Division of Traffic Engineering.
5. The site shall comply with the Engineering Manuals for stormwater, and the drainage plan for this location shall be subject to acceptance by the Division of Engineering.

Representation – Mr. Kevin Rich, present on behalf of the appellant, who was also present as well as, Mr. Mike Wagner the operator for the facility. Mr. Rich indicated that they had reviewed the recommended conditions and agreed to abide by them.

Opposition – Ms. Schatzie Dudee, who lives at 931 Hammock Oak Lane; was present to object. She distributed some information to the Board, and said her information was in three sections; the first section being information from the LFUCG website from 1994 (Greenspace Commission), which was the only thing she could find as a guideline for development in the subject area. The second section of her handout was a presentation made by Mr. Ron Herrington, formerly with LFUCG Traffic Engineering, who referenced a Brookings Institution (Washington, DC) report from 2008. The third section in her packet was a copy of an August 15, 2014 article from Kentucky.com (*Herald Leader*) about Kentucky's federal deadline to cut carbon emissions.

Ms. Dudee said that she lives just south of the subject property in Veteran's Park neighborhood, and she often walks by this area. She saw a sign posted for this development proposal only a few ago, and this is why she was at today's hearing. She said that in the three reasons that the staff is recommending approval, she disagreed with item A, which is stating: *"No aspect of this request, if approved, should significantly alter the existing relationship of the subject property and surrounding residential and commercial properties."* She said that she disagrees with this, because if a parking lot and/or building are placed on the subject property, it is going to change the character. Ms. Dudee said that also in the staff's recommendation in item C, it states, *"The site is particularly well suited to the proposed use, in all respects."* She said, again, she disagreed.

Ms. Dudee said she found on the LFUCG website, a Greenspace Commission, report in 1994, which links to a site that doesn't even exist. She opined that this development flies in the face of catastrophic and ongoing

climate change, which to her seemed beyond reckless. Ms. Dudee gave a brief discussion about our carbon footprint and how it is affecting the development of our cities.

Ms. Erin Sammons, who lives at 1721 Masters Lane, said that she is a parent of one of the children who is enrolled at the House of Pinnacle, the daycare center, adjoining the subject property. She said that she agreed with Mr. Dudee that it is preferable to have a nursing home facility verses an apartment complex, but she also agreed with revising the Zoning Ordinance to allow the nursing home to locate there. She would like to request an added condition, which would be to provide a landscape barrier between the two facilities. Some may otherwise wonder what the difference would be between the two. With a daycare, people are more on a look out for small children, verses at a nursing facility; the majority of the people would not be driving motor vehicles.

Chairman Stumbo asked Ms. Sammons what type of barrier was she requesting. Ms. Sammons said she is not talking about a fence, but something like shrubbery on the side of the property with trees.

Chairman Stumbo asked Mr. Rich if he would be willing to provide a landscape barrier between the two facilities. Mr. Rich responded affirmatively. Chairman Glover asked the staff if this could be added to the conditions if the Board chose to approve this. The staff nodded in agreement.

Action - A motion was made by Mr. Griggs, seconded by Ms. Whitman; and carried unanimously (Meyer absent) to **approve C-2014-59: KARL SCHNEIDER** - appeals for a conditional use permit to construct an assisted living facility in a High Density Apartment (R-4) zone, at 4251 Saron Drive, based on the staff's recommendation of approval and subject to the original five conditions, and a sixth to add:

6. The site shall be designed with additional landscaping along the southern property line to block children from entering the site.

H. Administrative Reviews

1. **A-2014-56: SPRING FORK, LLC** - an administrative appeal to allow an accessory structure, which exceeds the allowable size limit, to remain as constructed in a Single Family Residential (R-1D) zone, at 124 Burley Avenue (Council District 3).

The Staff Recommends: Approval, for the following reasons:

- a. A restricted approval of the appeal will allow this larger than allowed (but at one time permitted) detached accessory structure to remain, but will otherwise ensure the long-term compliance with the allowable uses in the Zoning Ordinance for the subject property.
- b. Provided that the use of the 2nd floor does not include any dwelling units and that all associated interior plumbing and other improvements (such as kitchen facilities) indicative of dwelling units are removed, the accessory structure will be substantially similar to the building permit issued for this structure in 2007.

This recommendation of approval is made subject to the following conditions:

1. This property shall be restricted to one single family dwelling unit, and the accessory uses in the R-1D zone.
2. The second floor of the accessory structure shall not be utilized, and no construction activities shall commence without the issuance of a new building permit from the Division of Building Inspection.
3. Prior to occupancy or other use of the second floor of the accessory structure, all the plumbing shall be removed from the second floor except for one bathroom. One "living quarter, without cooking facilities and not rented, for guests and employees of the premises" shall be allowed as an accessory use, should the property owner choose to do so.
4. The accessory structure shall not be used for any commercial activity.
5. Any use of the accessory structure that is not customarily accessory, clearly incidental, and subordinate to the principal use of a single family home shall not be permitted.

Representation - Mr. Matt Miniard, who lives in Lexington with an address of P.O. Box 910470, was present representing Spring Fork. He indicated that they had reviewed the recommended conditions and agreed to abide by them.

Staff Comment - Mr. Emmons announced that the staff had received 9 letters of support, as he distributed those to the Board at this time. He noted that they all say almost the same thing.

Board Question - Mr. Griggs asked Mr. Miniard how this appeal got to this point. He noted that Mr. Miniard had an original building permit in 2007 to build a garage that was 990+ square feet (allowing storage above), with a limit of a 7 foot ceiling. He asked Mr. Miniard to confirm that he had a history of being in the construction business for

several decades. Mr. Miniard responded affirmatively. Mr. Griggs asked if he understood the Zoning laws, and the "50% rule" about accessory buildings not being over "50% of the size of a principal permitted structure. Mr. Miniard responded affirmatively. Mr. Griggs again asked how this appeal came to this hearing today. Mr. Miniard asked if the Board had received a copy of the building permit that was issued. Mr. Emmons responded and said that he had distributed the permit in a packet prior to this hearing and that it has the word "void" on it.

Mr. Miniard said that the exterior was built per the building permit, and over time, he ran into some financial difficulties. Over the years this project was in limbo; then his needs changed. He said that due to an oversight, he had put some interior finish materials in the subject building that he shouldn't have. He said the oversight was his fault; however, what was done is not out of character with the neighborhood, neighbors supported it and he was asking the Board for their support. At this time, Mr. Griggs and Mr. Miniard discussed some discrepancies as to the ceiling being over 7 feet in height, and as to whether or not this structure was being built for living quarters.

Chairman Stumbo asked staff if this appeal was denied, what would be the ramifications from that decision. Mr. Emmons replied that, if the appeal is denied, Building Inspection would not be able to issue a building permit for the unfinished structure as it is. The applicant would then have to look at either tearing down the structure to make it compliant with the Zoning Ordinance; or possibly building onto the principal permitted structure, or possibly changing it to make it all part of one principal structure on the property.

Mr. Emmons said that with the assumption that the applicant would not tear it down willingly, the staff looked at different alternatives; and going through the applicant's justification. Ultimately, this is where staff came to the recommendation of approval. He said that the heart of the matter is what happened on the second floor of this accessory structure; and the heart of the staff's recommendation is condition #3, which states: "Prior to occupancy or other use of the second floor of the accessory structure, all the plumbing shall be removed from the second floor except for one bathroom. One "living quarter, without cooking facilities and not rented, for guests and employees of the premises" is allowed as an accessory use, should the property owner choose to do so.

Mr. Glover asked, as he was reading condition 3, if Mr. Miniard couldn't go forward with anything until the Board made some recommendation of approval or disapproval etc., and if approved, would it require him to remove all the plumbing on the second floor except one bathroom. Mr. Emmons said that he had not been inside of the structure, and he based the staff report on the information he had available, and in speaking with the applicant. Mr. Glover then asked what did the "D" mean in an R-1D zone. Mr. Emmons responded that it is a zone that, in the Single-Family Residential zone, the letter indicates the lot size required.

Mr. Miniard commented that the structure is in a neighborhood that recently transitioned into student housing. It just so happens that in every direction in the Burley, Merrick, and Samson neighborhood, it is going "R-3". He stated that in this neighborhood, there are other properties have similar structures as to what he has. Mr. Miniard said that this was not willful, and he had no problem pulling out the plumbing.

Mr. Marx said that if this is not approved, there would be a tremendous amount of uncertainty about what would happen. It is likely that the building will just sit there unused and deteriorating for many years while things are battled out in court. He said part of the reason why staff recommended approval was based on how it was originally permitted in 2007, and there wasn't a very strong case for modifying the actual exterior, which basically defined the visible appearance of it in terms of size and mass.

Ms. Moore asked what the building could be use for. She said that the reason for this application before the Board was because it was more than the 50% of the floor area allowed. Mr. Marx replied that it had to be "couched" that way to a certain extent, but the real issue is how the upper level floor is to be used. It was supposed to be for storage, but it got converted to a living unit. Ms. Moore stated that she understood that, but what she didn't understand was that if it was approved, was there an incentive to not let that building deteriorate because in the future, it might used for what they hoped to use it for. If it cannot be used for living units, it can't be rented to students; if the plumbing is torn out, they cannot live there; so she asked what it would be used for. Mr. Miniard responded that his intention is not for it to be a student rental. He said that he has an elderly mother, and a disabled brother, and his needs have changed over the course of the years for the subject structure to where he may want to put someone there as a caregiver, and not rent it out to students.

Mr. Glover asked staff if this was an accessory structure. Mr. Marx responded affirmatively. Mr. Glover asked if he was in correct that in the Zoning law, that accessory structures may be used as living quarters. Mr. Marx replied that it could be living quarters as long as the overall property just has one dwelling unit; so the living quarters couldn't be separate. If it had a kitchen, it would automatically be considered as a separate dwelling unit. Mr. Glover then asked if living quarters meant, not rental property. Mr. Emmons said that it is described as living quarters for guests and employees, without kitchen facilities and not rented; that is how accessory use is defined. He said that the Zoning Ordinance does not say whether or not that accessory use has to be in the principal

permitted structure or in a separate accessory detached structure; and it could be in either. Mr. Miniard said that he is compliance with all that has been mentioned, and that there are no ceilings in the structure that are above 7 feet in height.

Mr. Griggs then asked how they came up with the 1624 square foot size of this subject structure, if it is inhabitable, because it is only measured in square footage that is inhabitable. That would be 7 foot or 7 foot 4 inch; and asked what is the cut off. Mr. Emmons said that the difference between whether it is designated as floor area or the size of the structure; Article 15, regulates the size of the structure in total.

Action - A motion was made by Mr. Glover, seconded by Ms. Moore; to **approve A-2014-56: SPRING FORK, LLC** - an administrative appeal to allow an accessory structure, which exceeds the allowable size limit, to remain as constructed in a Single Family Residential (R-1D) zone, at 124 Burley Avenue, as recommended by the staff and subject to the five conditions, adding a sixth condition as follows:

- 6) The accessory structure shall be inspected by the Division of Planning within 30 days of Board action, and again in September of 2015, and on an as-needed basis thereafter, to determine compliance with these conditions. The property, including, the interior of the accessory structure, shall be made available for inspection by the appellant in a timely manner.

Discussion - Chairman Stumbo asked Mr. Miniard if he agreed to abide by the sixth condition; Mr. Miniard replied affirmatively. The motion carried 4-1 (Griggs opposes, Meyer absent).

- IV. **BOARD ITEMS** - The Chair announced that any items a Board member wished to present would be heard at this time.

There were none

- V. **STAFF ITEMS** - The Chair announced that any items a Staff member wished to present would be heard at this time.

There were none

- VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date would be September 26, 2014.

- VII. **ADJOURNMENT** - Since there was no further business, the Chair declared the meeting adjourned at 6:34 p.m.

Barry Stumbo, Chair

James Griggs, Secretary